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November 30, 2004

VIA FACSIMILE @ 202-219-3923

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2004 NOV 30 P 4: 32

Alva E. Smith
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: FEC MUR 5544 "Said No" commercial

Dear Ms. Smith:

Missourians for Hanaway (the "campaign") recently received its copy of a Federal Election Commission ("FEC") complaint filed by the Missouri Democratic Party regarding the campaign's "Said No" commercial. By this letter, the campaign requests that the FEC dismiss the complaint and take no further action. The complaint is legally baseless. It was a partisan attempt to generate adverse publicity for the campaign, as reflected by the fact that the Democratic Party issued a press release on the same day that the complaint was filed. A copy is attached.

The campaign's specific responses to the complaint allegations are described below.

Summary of the Commercial

The commercial was aired on Missouri television stations, and was paid for and created by the candidate committee of Representative Catherine Hanaway – Missourians for Hanaway. Representative Hanaway was an unsuccessful candidate for Missouri Secretary of State in the 2004 election.

In the first four seconds of the thirty second commercial, President George W. Bush is depicted before a crowd and says: "Catherine, Thank you for your leadership and your service." Representative Hanaway and President Bush are then shown shaking hands on the platform. Next, Representative Hanaway begins to speak from the podium stating: "My name is Catherine Hanaway, and you may recognize me from my commercials. Technically, they were the

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Governor's commercials. Thanks to you all when the Governor asked for the third time for tax increases that would have totaled more than 1.2 billion dollars, we could stand up and say no and it stuck." The visuals displayed as Representative Hanaway speaks alternate between Representative Hanaway alone at the podium and scenes from the State Capitol. Word messages describing Representative Hanaway's achievements are overlaid on the pictures. In the final three seconds, President Bush and Representative Hanaway are again shown waving to the crowd. The commercial concludes with the paid for by information and the audio statement "Catherine Hanaway, Secretary of State."

Except for the appearances by President Bush at the beginning and end of the commercial, no federal candidate is depicted or referenced in "Said No." When the crowd is visible, none of the President's campaign materials (such as signs) are prominently featured or even readable.

The Commercial was not Coordinated

The complaint alleges that the commercial was an in-kind contribution to the President because it was a coordinated communication. Under BCRA, an expenditure that is coordinated with a federal candidate counts as an in-kind contribution to the federal candidate. 2 U.S.C. § 441a(a)(7)(B)(i). The FEC regulations specify that a public communication is an in-kind contribution only if the candidate and person paying for the communication have engaged in conduct that would constitute coordination. 11 C.F.R. § 109.21.

"Said No" was prepared solely by agents of Missourians for Hanaway. It was not coordinated with the President or any of his agents. Neither the President nor his agents requested or suggested the commercial, was materially involved in its preparation, or had substantial discussions with anyone at Missourians for Hanaway about it. Missourians for Hanaway did not request and was not given permission to videotape the President's remarks or his appearance on the stage with Representative Hanaway. The commercial does not include any of the President's campaign materials and, as far as the campaign knows, no common vendors or former employees or independent contractors of the President's campaign were involved in the preparation of the commercial.

The complaint suggested that an advertisement is necessarily coordinated, because a federal candidate is depicted in it. In support, the complaint cited FEC Advisory Opinion No. 2003-25. But, in that opinion, the federal candidate knowingly appeared in the commercial and followed a prearranged script. By way of contrast, "Said No" includes only candid shots of the President. A mere joint appearance of a federal and state candidate does not constitute "material

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involvement" if it is not for the purpose of preparing a public communication. See 11 C.F.R. § 109.21(d)(2) (the candidate must be materially involved in decisions regarding the public communication to satisfy the conduct standard).

Under these circumstances, the commercial was not an in-kind contribution to the President because there was no coordinating conduct.

The Commercial Does not Support or Promote a Federal Candidate

The complaint also alleges that Missourians for Hanaway used non-federal funds to support a federal candidate. Under BCRA, state candidates cannot finance public communications that "promote" or "support" federal candidates or officeholders with non-federal funds. 2 U.S.C. §§ 441i(f), § 434(f)(3)(B)(iv); 11 C.F.R. §§ 100.29(c)(5), 300.71 (2004). The United States Supreme Court has specifically noted that this prohibition does not prevent a state or local candidate "from advertising that he [or she] has received a federal officeholder's endorsement." McConnell v. FEC, 124 S. Ct. 619, 684 (2003). Thus, the mere conveyance of a federal candidate's endorsement does not constitute "promoting" or "supporting" a federal candidate.

In Advisory Opinion No. 2003-25, the FEC addressed a very similar situation. A candidate for mayor of Evansville, Indiana wanted United States Senator Evan Bayh, D-Ind., to endorse his candidacy in television commercials. Senator Bayh – who was also running for re-election in 2004 – was the only proposed speaker in the advertisement. In the narrative text, Senator Bayh extolled the mayoral candidate and endorsed his candidacy. Images of Senator Bayh standing in front of an American flag were interspersed with images of the mayoral candidate.

The FEC concluded that this advertisement did not support or promote Senator Bayh and could be paid for with non-federal funds:

The mere identification of an individual who is a Federal candidate does not automatically promote, support, attack, or oppose that candidate. . . . Congress, in passing BCRA, specifically contemplated communications paid for by a State or local candidate and referring to a Federal candidate's endorsement of a State or local candidate. One of BCRA's principal sponsors, Senator Feingold, explained that the relevant BCRA provisions would not prohibit "spending non-Federal money to run

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advertisements that mention that [state candidates] have been endorsed by a Federal candidate or say that they identify with a position of a named Federal candidate, so long as those advertisements do not support, attack, promote or oppose the Federal candidate." 148 Cong. Rec. S2143 (daily ed. Mar. 20, 2002). Based on the facts you have presented, the "Committed" advertisement falls into this category; the advertisement endorses the candidacy of Mr. Weinzapfel for Mayor of Evansville and not Senator Bayh for the U.S. Senate, and does not promote, support, attack, or oppose any Federal candidate.

FEC Advisory Op. No. 2003-25.

Applying the reasoning of the Supreme Court and FEC to the "Said No" commercial, it does not promote or support President Bush. The images of President Bush at the beginning of the commercial are clearly intended to show that President Bush affirms Representative Hanaway. In fact, President Bush's only statement is: "Catherine, Thank you for your leadership and your service." The closing scene of the President and Representative waving to the crowd together visually conveys the President's affirmation of Representative Hanaway. The commercial's overall theme and all of the audio and text messages focus on Representative Hanaway's achievements and her candidacy for Secretary of State. The advertisement does not contain any visual or audio references to President Bush's candidacy.

Given that the entire commercial focuses on Representative Hanaway's candidacy for Secretary of State and that President Bush's appearances only serve the purpose of endorsing her, "Said No" is indistinguishable from the television commercial approved in Advisory Opinion No. 2003-25. The United States Supreme Court and Congressional sponsors of BCRA have expressly observed that such advertisements are permissible. BCRA does not prohibit Missourians for Hanaway from paying for the "Said No" commercial with non-federal funds.

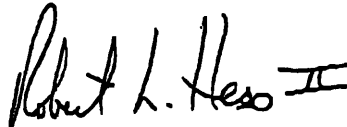
Given the lack of merit to the claims in the complaint, the campaign requests that FEC take no further action on the complaint. Unfortunately, campaign finance laws encourage political operatives to file spurious complaints against their opponents to generate adverse publicity. Such is the case here, where the complaint was filed and publicized in a press release the same day. Despite their lack of merit, the costs in time and money of responding to such complaints can be significant.

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The campaign apologizes for its delayed response. In the waning days and aftermath of the election, time and resources were very limited. If you have any additional questions or comments, please feel free to contact me.

Sincerely,



ROBERT L. HESS II

RLH:cw

cc: Charles Caisley (via email)



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FOR IMMEDIATE RELEASE
Friday, Sept. 24, 2004

For more information contact:
Steve Glorioso: 573-230-7058
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Catherine Hanaway Violates Federal Election Law with Illegal Soft Money Contribution Designed to Promote Her Struggling Campaign

*-Hanaway wants to oversee Missouri's election system,
 but doesn't abide by election laws-*

Jefferson City, MO – Republican candidate for Secretary of State Catherine Hanaway has violated federal election law by making a soft money in-kind contribution to the campaign of George W. Bush, enabling her to produce and air a television ad in which she appears with the President. Hanaway's illegal contribution prompted the Missouri Democratic Party to file a complaint today with the Federal Election Commission (FEC)

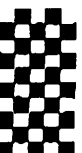
"Catherine Hanaway wants to be in charge of election laws in Missouri but has willingly and flagrantly violated federal election laws as part of an effort to boost her own struggling campaign," said Steve Glorioso, spokesman for the Missouri Democratic Party. "Catherine Hanaway has once again shown that she believes the rules others must play by don't apply to her. But come November, Missouri voters will let her know that her holier than thou attitude is a one-way ticket to defeat."

Hanaway violated federal election law by coordinating on the production and broadcast of a Hanaway campaign commercial featuring Bush introducing her at a Bush-Cheney '04 campaign rally. The Hanaway ad has aired on cable television repeatedly across the state and is featured on her campaign web site, www.hanaway.org. Such coordination and the cost of production and broadcast of the ad amount to an in-kind contribution from the Hanaway campaign to the Bush campaign, a violation of federal election law because the Bush campaign has already accepted public funds and is therefore prohibited from accepting any outside contributions

Furthermore, Catherine Hanaway is candidate for non-federal office, and consequently the in-kind contribution her campaign made was funded with non-federal or "soft" money, also an illegal practice. The law expressly prohibits this type of contribution, holding that state candidates like Hanaway are actually prohibited from using their non-federal campaign funds to promote or support federal candidates.

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"As someone running to be Missouri's chief elections official, Catherine Hanaway should know that such a contribution from her campaign to the Bush campaign is a soft money contribution in violation of elections law," Glorioso continued. "But even with that knowledge, she went ahead and coordinated with the Bush campaign to produce and air this ad because she felt that she needed to make it seem like she was close to George W. Bush in order to raise her profile.

"She has demonstrated a blatant disregard for elections law in pursuit of her political goals, calling clearly into question her fitness to oversee Missouri's elections system "

The complaint filed today by the Missouri Democratic Party is attached.

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